

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1564 of 2015

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1. Kedar Paswan, Son of late Raman Paswan, resident of village & P.O.-Kharsari, P.S.-Kaukole, District- Nawadah,
2. Hari Keshwar Ram, Son of Hari Nandan Ram, resident of Mahabir Colony, Saichak, Anisabad, P.S.- Beur, Patna,
3. Laxmi Paswan, Son of late Chotte Lal Paswan, resident of Satbant Apartment, P.S.-Rukanpura, Bailey Road, District-Patna,
4. Manish Kumar Chand, Son of Sabhapati Ram, resident of Village & P.O.- Chandi, P.S.-Charpokhari, District-Bhojpur,
5. Ashok Kumar Paswan, Son of late Jaydeo Paswan, Village & P.O.- Kachhodi, P.S.-Lackh....., District-Madhubani

.... Petitioner/s

Versus

1. The State of Bihar,
2. The Chief Secretary, Government of Bihar, Patna,
3. The Principal Secretary of Chief Minister Secretariat, Government of Bihar, Patna,
4. The Principal Secretary, General Administration Department, Bihar, Patna,
5. The Principal Secretary, Finance Department, Bihar, Patna,
6. The Principal Secretary, SC/ST Welfare Department, Govt. of Bihar, Patna,
7. The Secretary, Rajya Mahadalit Aayog, Indra Bhawan, Bailey Road, Patna,
8. The Chairman, Rajya Mahadalit Aayog, Indra Bhawan, Bailey Road, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Binod Kumar Kanth, Sr. Advocate
For the Respondent/s : Mr. Lalit Kishore, Advocate General

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 02-11-2017

Challenge in this writ petition under Article 226 of the
Constitution is made to a Resolution passed by the Government of
Bihar in the Department of Personnel and Administration bearing No.
2950 dated 30th August, 2007, whereby Rajya Mahadalit Aayog
(hereinafter referred to as ‘the Aayog’) has been created and certain



functions have been delegated to the said Aayog. The first prayer made in the writ petition is that as the constitution of this Aayog for classifying the Scheduled Caste category already listed under the Presidential Order of the Government of India under Article 341 of the Constitution is impermissible, therefore, the Notification constituting the Aayog be quashed as ultra vires.

However, having heard learned counsel for the parties, we find that this prayer and challenge to the constitution of the Aayog were already made before this Court in the year 2008 vide CWJC No. 8576 of 2008 (Narendra Kumar vs. State of Bihar), and a Division Bench of this Court at that point of time has considered the said question in Paragraphs-5 and 6 of its order and has dismissed the identical prayer made in the writ petition. Paragraphs- 5 and 6 of its order passed on 21st July, 2008 which read as follows:-

“5. We find no impediment in the Constitution of India or any other law, for the State in constituting such Commission for the purposes notified therein. By constitution of such Commission, the State Government cannot be assumed to have tinkered with the Presidential Order, namely, The Constitution (Scheduled Caste) Order, 1950, in any manner whatsoever. What is wrong if the State government constitutes a Commission to find out the causes of the backwardness of the weakest of the Scheduled Castes in the State and eradicate their



backwardness by uplifting social and educational status. What is prohibited is the tinkering with the Presidential Order by the State government or making any sub-classification or micro-classification. Nothing of that sort seems to have been done.

“6. We are satisfied that the writ petition is wholly misconceived and liable to be dismissed and is dismissed, accordingly.”

(Emphasis is ours)

While doing so the Division Bench has also relied upon the judgment of the Supreme Court in the case of **E V Chinnaiah vs. State of Andhra Pradesh [(2005) 1 SCC 394]**, which was relied upon before us also by the learned Senior Counsel representing the petitioner to declare the constitution of the Commission as illegal. Once for the reasons as has been reproduced hereinabove similar prayer made in the case of Narendra Kumar (supra), has been decided we see no reason to reopen the issue now. Accordingly, the prayer for the Aayog is unconstitutional is quashed.

The second ground is to quash the Notification and the recommendations of the Committee as contained in Annexure-2 dated 31.03.2008 and 23.04.2008, whereby certain sub-classes have been carved out from the categories under Clause 2 of the already identified Scheduled Caste under the Presidential Order, referring to



Part-II of the Presidential Order Ammexure-1 and entry made in Schedule-II therein. It is stated that certain sub-caste of Scheduled Caste such as Dusadh, Dhari and Dharhi have been created by the Aayog by its aforesaid recommendation this is impermissible, as their power and function can be exercised only under Article 341 of the Constitution by the Parliament and the act of the State Government in interfering with the list and making amendments to the same by notifying further categories or sub caste in the list is impermissible. Taking us through the judgment of the Supreme Court in the case of **E V Chinnaiah** (supra), learned Senior Counsel argues that this is not permissible. He invites our attention to the principles laid down in Paragraph-13 of the aforesaid judgment and argues that any inclusion or exclusion from the said list can be done only by the Parliament under Article 341(2) of the Constitution and the act of the State Government in this regard on the recommendation of the Aayog is unsustainable. He argues that any division of an already notified caste from the Presidential List by creating a sub-caste is not permissible at the instance of the State Government. Accordingly, the classification done and the recommendation is challenged on these grounds.

Learned Advocate General refuted the aforesaid contention and argued that the State Government has not done any



such act which amounts to inclusion or exclusion from the Presidential List. On the contrary, he refers to Paragraphs-113 and 114 of the judgment in the case of **E V Chinnaiah** (supra) to show that what has been done by the State Government is only an act in furtherance to power available to them under Article 46 of the Constitution , i.e. to identify classes in the Scheduled Caste who fall in the weakest section in the already notified Scheduled Caste and to promote their economic necessity, special care is being taken to give them certain privilege and benefit from the State's largesse as an executive act. He argues that this is permissible and there is no reason to make any indulgence into the matter.

Learned Advocate General further invites our attention to the aims and object for which the Aayog has been constituted, i.e. to identify the weakest amongst the already notified castes and to provide to them basic facility of education and other requirements of life and for uplifting standard of life of such categories of the weakest section amongst the Schedule Caste.

We have heard learned counsel for the parties and considered various aspects of the matter. The law laid down by the Supreme Court in the case of **E V Chinnaiah** (supra) does prohibit and prevents the State Government from sub-dividing the castes mentioned in the Presidential list into different group and do any act



which amounts to including or excluding any caste in the list. This under Article 341 of the Constitution can be done only by the Parliament and not by the State Government. To that extent, we see no reason to reject the contention of the learned Senior Counsel for the petitioner. The law laid down in the case of **E V Chinnaiah** (supra) prevents any executive action or legislative enactment which has the effect of interfering, disturbing, rearranging, regrouping or reclassifying various castes in the Presidential List. However, the question is as to whether the impugned act of the State Government amounts to such an executive action which interferes with or amounts to reclassifying or inclusion or exclusion in the Presidential List. In our considered view, it is not so. The act of the State Government in the present case has got nothing to do for tinkering with or disturbing the Presidential List. What it does is to identify certain weakest section within the Scheduled Caste category already notified, evaluate their social and economic status and extend to them certain benefits of social scheme and various other privilege from the State Government to uplift their standard of living. If we analyze the law laid down by the Supreme Court in the case of **E V Chinnaiah** (supra), Hon'ble Justice S B Sinha in his concurrent judgment in Paragraphs-113 and 114 deals with the issue in the following manner :-



“113. The power of the State Legislature to decide as regards grant of benefit of reservation in jobs or in educational institutions to the backward classes is not in dispute. It is furthermore not in dispute that if such a decision is made the State can also lay down a legislative policy as regards extent of reservation to be made for different members of the backward classes including Scheduled Castes. But it cannot take away the said benefit on the premise that one or the other group amongst the members of the Scheduled Castes has advanced and, thus, is not entitled to the entire benefit of reservation. The impugned legislation, thus, must be held to be unconstitutional.

What is the remedy?

“114. There is one practical aspect of the matter which may not also be lost sight of. The Chart produced before us clearly shows that the members belonging to Relli and Adi-Andhra are hardly educated. What was necessary in the situation was to provide to them scholarships, hostel facilities, special coaching, etc., so that they may be brought on the same platform with the members of other Scheduled Tribes viz. Madiga and Mala, if not with the other backward classes. It is not in dispute that members belonging to Relli are hardly educated. Only 2% of the members of the said community have studied in secondary school. No one has ever been admitted in any engineering discipline or other professional disciplines. The said facts clearly go to show that providing reservation for them in



engineering or medical discipline or in public service would not solve their problem. Without such basic education, the members belonging to the said community would not be getting admission either in the engineering or medical colleges or other professional courses and as such the question of their joining public service may not arise at all. Now, even for the post of Class IV employees, qualification of passing matriculation examination is provided. Unless children of the said community are educated, the provision for both for education as also public service would be a myth for them and ultimately in view of the impugned legislation for all intent and purport, the benefit thereof would go to other categories. The State, in our opinion, should take positive steps in this behalf.”

(Emphasis is ours)

Accordingly, if we analyze the principles laid down by his Lordship in Paragraph-114 thereof, it is clear that in a given situation the State Government can provide by identifying weakest amongst the sub-castes of a notified Scheduled Caste so as to provide to them special facility and to take steps for bringing them on the same platform with other members of the Scheduled Caste/Tribe. The implication of the aforesaid judgment is that the law permits the State Government, in exercise of its executive function to do such thing as are necessary to uplift the social, financial, economic and living standard of a weaker section within



the Scheduled Caste/Tribe category and in this case this is precisely what has been done by the State Government and we see no reason to interfere into the matter. In fact, the act of the State government is in furtherance of the constitutional mandate imposed upon the State under Article 46 of the Constitution which mandates promotion of educational and economic necessity of Scheduled Caste/Scheduled Tribe and other weaker section and if in furtherance of this intention special categories within the Scheduled Caste or Scheduled Tribe are identified who are still down-trodden and from a still weaker section and if some benefit is provided to them, we see no error or violation in the same.

In the case of **E V Chinnaiah** (supra) what has been prohibited by the Supreme Court was providing reservation to an upper community or class of person by dividing a Scheduled Caste into further category which has the effect of inclusion or exclusion something beyond the Presidential List. In the present case, we see no such action in the impugned policy decision of the State Government. However, during the course of hearing the learned Senior Counsel representing the petitioner tried to indicate that some of the members so identified as weaker section and who are classified as "Mahadalits" are also granted benefit by providing reservation in case of public appointment. If that be so, specific



instances of such reservation in employment may be challenge in accordance with law which can be examined on the fact that come on record but on such consideration the general Resolution of the State Government impugned before us which is found to be within the permissible powers available to the State Government under the Constitution, we see no reason to interfere into the matter.

The writ petition is, therefore, dismissed.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

mrl./-

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